[Sri K. Vinayakam] [18th August 1956

so much interest when his Andhra comrades were here. Apart from that, in the discussion, I would like the Leader of the House to make it clear how we should solve this problem. There is no use of simply making a statement and leaving the matter in the lurch. The Opposition Members . . .

MR. SPEAKER: The hon. Member will have ample time to say what the Hon. Leader of the House should say and how the problem should be solved. The Hon. Leader of the House will make a statement at 3 p.m. to-day.

V.—GOVERNMENT MOTION.

MOTION UNDER RULE 21 (3) OF THE ASSEMBLY RULES *re* CHANGE IN THE ORDER OF BUSINESS

THE HON. SRI C. SUBRAMANIAM: Among the official Bills, we will be taking up only the Presidency Small Cause Courts (Madras Amendment) Bill during this sitting. After that is disposed of, we will take up the half-hour debate and then the non-official business. I move—

"That in the agenda for 18th August 1956 under Official business the Presidency Small Cause Courts (Madras Amendment) Bill, 1956, alone be taken up for consideration."

The motion was put and carried.

VI.—GOVERNMENT BILL.

THE PRESIDENCY SMALL CAUSE COURTS (MADRAS AMENDMENT) BILL 1956.

THE HON. SRI C. SUBRAMANIAM: Sir, I beg leave to introduce the Presidency Small Cause Courts (Madras Amendment) Bill *, 1956, and move—

"That the Bill be taken into consideration at once."

This Bill is intended to rectify certain defects found in the provisions of the Presidency Small Cause Courts Act, 1882. Section 41 of the Act reads—

"When any person has had possession of any immovable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent, does not exceed two thousand rupees, as the tenant, or by permission of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn.

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

* Published in the *Fort St. George Gazette*, dated 6th June 1956.

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such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.''

Under section 47 of that Act, the occupant can put in an application saying that he would be moving the High Court in this matter and have the proceedings in the Small Cause Court stayed. For putting in such an application, the occupant has to execute a bond with two sureties. What happens now is this : Immediately after an application is made by the occupant that he intends moving the High Court all further proceedings in the Small Cause Court will have to be stayed, as the provision stands at present. Sometimes it takes time to furnish security. Ultimately the applicant may not furnish the security and allow the application to be dismissed. So much so he gains two or three months' time, and thus this provision is used for dilatory purposes. Now we propose to amend section 47 so as to make the stay become effective only after the security is furnished. That is the sum and substance of the amendment proposed. (Interruption by Sri M. Kalyanasundaram.) Till he moves the High Court. Once he moves the High Court and a regular suit is filed, then the suit will be an effective proceeding, and whatever is decided on the suit, will be the final adjudication in the matter. Therefore, Sir, this amending Bill is brought forward. I hope the House will accept it. 10-50 a.m.

MR. SPEAKER : Motion moved—

"That the Presidency Small Cause Courts (Madras Amendment) Bill, 1956, be taken into consideration at once.''

* SRI M. NARAYANA KURUP : Sir, in matters where the stay becomes effective only after the security is furnished, it may sometimes defeat the very purpose. Therefore, it seems to me that instead of laying down the principle that it becomes operative after the security is furnished, a time limit may be fixed. The Hon. Minister stated that dilatory tactics might be adopted. I agree that it may be so sometimes. But the other side also sometimes, when security is furnished, takes objection saying that it is insufficient or it may ask for a commission or a number of other things which may drag on the furnishing of security for a number of months. Therefore, will it not be better that a reasonable time limit is fixed within which the security has to be furnished? Otherwise this will lead to the other way where the opposite party may take advantage of the provision. An immediate stay is essential sometimes in order to meet out justice and prevent injustice.

SRI E. L. RAGHAVA MUDALIAR : Sir, stay is provided for just to avoid certain injustice that may be caused. If it is cash security and if it is a small sum, it is all right. But in many cases security has to be provided for a considerable sum, and it is not

possible to provide cash security. Then property is offered as security. In such cases, the other side will never agree as to the value and may require a test. All these things take some time. If property security is considered sufficient, then the document has got to be registered. Even within this reasonable time of one week, injustice may be done. Therefore, as Mr. Kurup observed, instead of making the furnishing of security a condition, a time-limit for furnishing security may be fixed. If they fail to furnish security within that time, then, of course, the petition may be dismissed. Therefore, I support Mr. Kurup.

THE HON. SRI C. SUBRAMANIAM: Sir, the point for consideration is this. A number of cases have been brought to the notice of the Government (and the High Court also has taken notice of this) that invariably what happens is that an application is made and stay obtained, but the security is not furnished. As regards the difficulty pointed out by Sri Narayana Kurup and endorsed by Sri Raghava Mudaliar, we have to bear in mind that the original proceedings under section 41 and the application made under section 47 are both before the same court. Therefore, the question whether the court should expeditiously proceed with the application under section 41 or should wait for the furnishing of security under section 47, can very well be left to the discretion of the court, because it is not as if some other court is trying the case and a stay has to reach that court from another place. When both the applications are before the same court, and if it is found that dilatory tactics are adopted by the owner of the house or the owner of the property, then the court can very well say that it is adjourning the other proceedings also. Therefore, in all these matters, discretion should be given to the court. As it now stands, once an application is made, automatically stay has to be effected. The difficulties contemplated are not likely to arise and if we put a time-limit and the proceedings are not closed, instead of the furnishing of the security, because of the dilatory tactics adopted by the owner, automatically the application will have to be dismissed. Once the security is furnished, then automatically the stay comes into effect. Then he will have to move the High Court. If the High Court is not moved, the security furnished may be used for the purpose of compensating the loss incurred. Therefore, I do not think the suggestion made by the hon. Member that a time limit should be fixed is workable or practicable. We are leaving the matter entirely to the court to find out whether it should proceed expeditiously with the application under section 41 or it should take up the security proceedings. Once security is given, stay comes into effect. Therefore, I do not think any practical difficulties are likely to arise.

* SRI M. NARAYANA KURUP: If a frivolous petition is brought forward, then of course it can be dealt with by the court. Instead of making the stay effective after the security is furnished,

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will it not be better to give discretion to the court to issue an interim stay if that is possible? The stay will not be effective unless the security is furnished. If the court grants stay for some time, and if it is satisfied that the party is deliberately adopting dilatory tactics, then the court can dissolve the stay.

THE HON. SRI C. SUBRAMANIAM: "Interim stay" and stay have the same effect. There is no question of any interim stay effected and later on confirmed. The question is whether the application under section 41 should be proceeded with or not. The Court will decide whether it should proceed expeditiously with the application under section 47 or proceed with the hearing and disposal of the petition under section 41. Therefore, I do not think, Sir, any further safeguards are necessary. The court will take care of all these things.

MR. SPEAKER: The question is—

"That the Presidency Small Cause Courts (Madras Amendment) Bill, 1956, be taken into consideration at once."

The motion was put and carried and the Bill was taken into consideration.

Clause 2.

* SRI M. JAGANNATHAN: Sir, I move—

"In clause 2, in sub-section (3) of the proposed section 47 to the Central Act, *for* the words 'the Small Cause Court shall proceed with the application from the stage reached when security was furnished under sub-section (1)', occurring in lines 23–25 on page 2, *substitute* the words 'the Small Cause Court shall proceed with the application from the stage reached when security under sub-section (1) was accepted.'"

My amendment is a very simple one. Under sub-clause (1) of the proposed clause 47, it is stated that further proceedings will be stayed at the stage when the bond is accepted. Look at the words used in this sub-clause, namely. "the Small Cause Court shall stay further proceedings on the application from the stage reached when the bond was accepted by the Small Cause Court". In sub-clause (2) of the same clause, the relevant point of time that is contemplated is the time of the acceptance of the bond. But in sub-clause (3) of the same clause, it is stated that 'the Small Cause Court shall proceed with the application from the stage reached 11
when security was furnished under sub-section (1)'. The word a.m.
used is "furnished" and not "accepted". This will result in misinterpretation in my opinion. Because, "furnishing security" may be interpreted to mean the presentation of security into the court and not the actual acceptance thereof. Between the presentation of the bond to the court and the actual acceptance of the same,

there will be a certain interval of time. During this interval, certain proceedings would have taken place. When proceedings are started again, they will commence at the stage when the bond was presented to the Court, that is, when the security was furnished. This will give rise to unnecessary repetition of the proceedings that were already taken. That will cause hardship and in my opinion will be against all principles of jurisprudence. In the interests of uniformity, clarity and precision, I suggest that the words " was accepted " may be inserted in this clause. I hope that the Government will find no difficulty in accepting my amendment which will obviate a patent discrepancy.

SRI P. S. KRISHNASWAMY AYYANGAR : I second the amendment, Sir.

MR. SPEAKER : When it is said " furnished ", I think it means acceptance also. I think it is used in that sense.

THE HON. SRI C. SUBRAMANIAM : For the sake of having a uniform terminology, I have no objection to accept the amendment moved by hon. Member Sri Jagannathan.

MR. SPEAKER : The question is—

" In clause 2, in sub-section (3) of the proposed section 47 to the Central Act, *for* the words ' the Small Cause Court shall proceed with the application from the stage reached when security was furnished under sub-section (1) ', occurring in lines 23–25 on page 2, *substitute* the words ' the Small Cause Court shall proceed with the application from the stage reached when security under sub-section (1) was accepted.' "

The amendment was put and carried.

Clause 2, as amended, was put and carried.

Clause 1 and the Preamble were put and carried.

THE HON. SRI C. SUBRAMANIAM : Sir, I move—

" That the Presidency Small Cause Courts (Madras Amendment) Bill, 1956, as amended, be passed."

The motion was put and carried and the Bill was passed.

MR. SPEAKER : The House will now rise for lunch and meet again at 3 p.m.

The House then rose for lunch.